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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,481	12/18/2001	William P. Apps	1042 PUS	2454

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KONSTANTINE J. DIAMOND
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LOS ANGELES, CA 90023

EXAMINER

CHEN, JOSE V

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,481

Applicant(s)

APPS, WILLIAM P.

Examiner

José V. Chen

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-25 and 37-40 is/are allowed.
- 6) ☒ Claim(s) 1-20, 30-33 and 36 is/are rejected.
- 7) ☒ Claim(s) 26-29, 34 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01-12-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

With respect to the drawing objections, it was agreed in the interview of 10-06-03 that figure 10A showed such limitations. With respect to the first paragraph rejection, figs. 14 and 15 along with the discussion of the figures in the specification obviate such rejection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 15, 16, 18, 30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,644,219 in view of Wyler et al. The claims of 6,644,219 teaches pallet structure substantially as claimed including an upper section, lower section, support section such sections including reinforcement ribs, the only difference being that the ribs in the supporting sections are not specifically stated as extending therethrough. However, the patent to Wyler et al teaches the use of providing reinforcement ribs in the support section that extend from the top surface to the bottom surface of the support

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and platform. It would have been obvious and well within the level of one having ordinary skill in the art to modify the claimed structure of 6,644,219 to include reinforcement rib structure extending therethrough, as taught by Wyler et al, since such structures are conventional alternative strengthening structures use in the same intended purpose thereby providing structure as claimed.

Claims 6, 7, 8-14, 17, 19, 20, 36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims 19-23, 25-27 of U.S. Patent No. 6,644,219 in view of Wyler et al and Breezer et al. The claim ed structure of 6,644,219 structure substantially as claimed as discussed above including ribbed structure forming channels, the only difference being a reinforcement structure is not present in channels to provide better strength. However, the patent to Breezer et al teaches the use of reinforcement members placed in channels of a plastic pallet to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the claim structure of 6,644,219 to include reinforcement structures as taught by Breezer et al since such structure is conventional to provide the same intended purpose of providing extra strength thereby providing structure as claimed. Note the location projection of Breezer et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konig in view of Wyler et al. The patent to Konig teaches structure as claimed including upper and lower deck portions, leg members, ribbed portions (figs. 1-4, 6-9), the only difference being that the ribs in the support section do not extend therethrough from the top to the bottom surface. However, the patent to Wyler et al (figs. 2, 11, 12) teaches the use of such rib structure to be old. It would have been obvious and well within the level of one having ordinary skill in the art to modify the structure of Konig to include reinforcement ribs that extend therethrough, as taught by Wyler et al since such structures are used in the same intended purpose, thereby providing structure as claimed. It is noted that the procedure for forming at various steps has no patentable weight in a utility claim. The use of different connection processes, such as one piece molding, welding, etc is well known and conventional practice in plastic processes and applicant is given judicial notice of such. To use such conventional processes would have been obvious and well within the level of ordinary skill in the art depending on budget and specification criteria

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Claims 6, 7, 8-14, 17, 18, 19, 20, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konig in view of Wyler et al and Breezer et al. The patent to Konig in view of Wyler et al teaches structure substantially as claimed as discussed above including ribbed structure forming channels, the only difference being a reinforcement structure is not present in channels to provide better strength. However, the patent to Breezer et al teaches the use of reinforcement members placed in channels of a plastic pallet to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Konig to include reinforcement structures as taught by Breezer et al since such structure is conventional to provide the same intended purpose of providing extra strength thereby providing structure as claimed. Note the location projection of Breezer et al.

Allowable Subject Matter

Claims 21-25, 37, 38, 39, 40 are allowable over the prior art of record.

Claims 26, 27, 28, 29, 31, 32, 33, 34, 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Any inconvenience is regretted.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (703) 308-3229. The examiner can normally be reached on m-f, m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703)308-2168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

José V. Chen
Primary Examiner
Art Unit 3637

Chen/jvc
04-19-04